

**DECISION RECORD
AND
FINDING OF NO SIGNIFICANT IMPACT
ON THE
FIDELITY EXPLORATION AND PRODUCTION COMPANY
TONGUE RIVER-DRY CREEK PROJECT
PLAN OF DEVELOPMENT
MT-020-2004-298**

SUMMARY OF THE PROPOSAL

Fidelity Exploration & Production Company (Fidelity) proposes to develop coal bed natural gas (CBNG) in its Tongue River-Dry Creek project area. The project area is located in the producing CX Field, primarily Sections 13, 15, 23, 26, and 36, T. 9 S., R. 39 E. and Sections 18 and 19, T. 9 S., R. 40 E., in Big Horn County, southeastern Montana. The proposed action requiring a decision by BLM includes the drilling, completing and producing of 24 federal wells at 11 well sites and completing and producing 1 previously drilled federal well on private and federal surface. Fidelity would construct and install the associated infrastructure serving the federal leases within the project area, as well as reclaiming disturbed areas and plugging federal wells when they are no longer needed.

DECISION

Based upon the analysis of potential environmental impacts described in the *December, 2004 Fidelity Exploration and Production Company, Tongue River-Dry Creek Project Plan of Development Environmental Assessment* (EA) (Attached), it is my decision to select Alternative B from the EA and approve the Plan of Development (POD) dated March 4, 2004, submitted by Fidelity Exploration & Production Company, as modified by conditions of approval.

Approved project components include:

- Construction, drilling, completion, routine operation and reclamation of up to 24 federal coal bed natural gas wells on 11 locations.
- Establish production from the one existing federal CBNG well; the 42D-1599.
- Issue one right-of-way for buried gas/water flowlines, powerlines, and access roads.
- All methods of disposal for water produced from federal wells: (a) 2 discharge points (outfalls) along the Tongue River, MPDES permit (MT0030457) (b) Spring Creek Coal Mine use for mine operations, (c) one existing off-channel impoundment, and (d) 3 stock watering tanks.
- Access via 9.8 miles of unimproved roads (1.8 being new two-track) is authorized to allow the operator access to its individual leases as described in the Proposed Action.
- Approximately 5.48 miles of gas, water and electrical lines will be buried in a common corridor, and 0.5 miles of buried electrical in an individual corridor (15 foot wide) from the 25 federal wells to the designated facilities.

- One additional overhead power line, approximately ½ mile, will be constructed to provide service to those wells located in the northeastern portion of the POD, sections 13 & 18.

Approval of the Dry Creek POD which includes a Water Management Plan, a Wildlife Monitoring and Protection Plan, and a Reclamation Plan, is subject to the operator implementing and complying with the attached Conditions of Approval (COA). These conditions of approval were derived from the additional mitigating measures listed in Alternative B of the EA and contain all practicable means to avoid or minimize environmental harm. These conditions of approval are either a result of the impact analysis or adopted from the MT Statewide FEIS, 2003.

This decision is effective immediately. Actions may begin immediately in accordance with any restrictions or constraints imposed by lease stipulations, permit conditions of approval or surface owner agreements.

FINDING OF NO SIGNIFICANT IMPACT (FONSI)

I have reviewed environmental assessment MT-020-2004-298, including the explanation and resolution of any potentially significant environmental effects. The BLM Preferred Alternative, Alternative B, *Fidelity Exploration & Production Company, Tongue River-Dry Creek Project Plan of Development with Additional Mitigation*, would not have any significant effects on the human environment and preparation of an environmental impact statement (EIS) is not required. It is my decision to implement the BLM Preferred Alternative with the mitigation measures described herein.

MANAGEMENT CONSIDERATIONS/RATIONALE FOR THE DECISION

My FONSI determination on the Dry Creek POD is based upon a number of factors, including careful consideration of the relevant issues listed in the EA.

Public Involvement

The Miles City Field Office completed the Montana Statewide Final Oil and Gas EIS and Amendment of the Powder River and Billings RMPs on April 30, 2003 (MT EIS). One result of this effort is an extensive database of public input on CBNG. Issues, comments and concerns obtained from the public throughout the EIS scoping, comment and protest period were all used to review Fidelity's Dry Creek POD and prepare the EA. Additional issues, comments and concerns related to CBNG development were generated during preparation of the 2004 Badger Hills POD EA and the 2004 Powder River Gas POD EA through consultation with landowners, agency and tribal representatives and during site inspections in the project areas.

The Dry Creek POD is similar to the Badger Hills POD. The Dry Creek POD does not include the use of new technology or water management methods. The Dry Creek project will utilize existing compressor and water management facilities. Construction activities are limited to the water, gas and electrical line installation from the wells to the existing facilities.

A specific opportunity for public involvement on Fidelity's proposal was provided via the Application for Permit to Drill (APD) posting period (43CFR 3162.3-1(g)). This 30 day public comment period started on March 4, 2004. No comments were received from the public during or following the 30-day posting period. The public issues, comments and concerns, from the various documents and consultations, were utilized in the environmental analysis and subsequent FONSI/Decision Record.

Consistency with Land Use Plan

Alternative B, the BLM's Preferred Alternative, is in conformance with the Powder River RMP, as amended by the Miles City District Oil and Gas FEIS/Amendment (BLM, 1994), the Areas of Critical Environmental Concern EA/Amendment of the Billings, Powder River and South Dakota RMPs (BLM 1998), and the Montana Statewide Oil and Gas FEIS/Amendment of the Powder River and Billings RMPs (BLM, 2003), and this decision is in conformance with the overall planning direction for the area. The Powder River RMP, as amended, required that "standard" and "special" protective stipulations and mitigation measures in the form of conditions of approval be applied to prevent undue adverse impacts to other resource values. Standard and special protective measures were identified and incorporated into the BLM Preferred Alternative to reduce or eliminate impacts.

Air Quality

The air quality impact analysis (EA Section 4.2.1) did not identify any pollutant concentrations that will be in violation of the applicable air quality standards from the Fidelity – Dry Creek POD. Due to the nature of the Dry Creek project, no additional compressor engines would be required by using existing facilities. The MDEQ Air Resources Management Division has determined a State air quality permit is not required for the current project. Specific analysis was completed for the EA to analyze the temporary pollutant emissions generated from CBNG drilling operations. Therefore, it is concluded that impacts to air quality will not be significant.

Cultural Resources

A cultural resource survey did not identify any sites eligible or listed on the National Register that will be impacted by the Dry Creek POD (EA Section 4.2.2). The SHPO concurred with BLM's determination that no historic properties will be affected by the BLM approval of the Dry Creek POD (EA Section 1.5).

In regards to cultural resources that are important to Native Americans, the BLM directed contractors conducting the inventory of the POD area to pay particular attention to traditional cultural concerns such as springs, homesteads, and plant communities. These features had been previously identified as important to Native Americans during consultation on the MT EIS. The inventory results for the POD did not identify any TCP's in the project area. The inventory results were provided to the Northern Cheyenne Tribe along with a field inspection and invitation to comment on the survey results. Comments were provided by the Tribe suggesting the presence of a qualified Tribal Cultural Resource Monitor during construction activities. Thus as a condition of approval, I have required the operator to notify BLM (406-232-7001) at least 48 hours before beginning construction activities associated with the sites listed below. BLM shall immediately notify the Northern Cheyenne Tribe about construction activities. The company shall have its consulting archaeologist or an archaeologist holding a valid BLM Cultural Resources Permit at the sites listed below during construction. The operator shall provide the opportunity to the Northern Cheyenne Tribe for a qualified cultural resources specialist to monitor construction in the locations listed below for the Federal portion of the Dry Creek Coal Bed Natural Gas Plan of Development (POD) Area. The results of monitoring shall be reported in writing by the Consulting Archaeologist and Tribe to BLM within 14 days after completion of monitoring activities.

The purpose of the monitoring is to identify any cultural resources that may be discovered by construction activities. The archaeologist or cultural resources specialist may temporarily halt construction within 300 feet (100 meters) of the find until it can be evaluated by a BLM Cultural Resources Specialist. The operator shall immediately notify BLM (406-232-7001) upon the discovery of cultural resources. The BLM authorized officer shall respond to the operator within the five working days as per Condition of

Approval No. 5. The same conditions in Condition of Approval No. 5 would apply for buried cultural resources encountered during monitoring.

CORRIDOR PLACEMENT:

The utility corridor between Wells 42 C, M-1399 and Wells 12D, M, C-1990 in sections 12, 18 and 19 shall be located within the bladed profile on the north/east side of the road.

MONITORING REQUIREMENTS:

Monitor trenching and blading operations at:

The utility corridor between Wells 42 C, M-1399 and Wells 12D, M, C-1990 in sections 12, 18 and 19.

The utility corridor between Well 22C, M-2399 and the battery site in section 24.

The utility corridor between Wells 32M, C-1599, 43M, C-1599 and the battery site in section 14.

A 2 acre area centered around Well 24C-2399.

Based on the above inventory results and conditions of approval, I conclude that impacts to cultural resources will not be significant from the selected alternative.

Surface Water Quality

BLM's approval of Fidelity's – Dry Creek POD will not significantly impact water quality. The discharge of produced CBNG water will be conducted under an approved MDEQ MPDES permit (MT0030457) that establishes the necessary discharge limits to protect water quality for beneficial use. Using the predicted sodium adsorption ratio (SAR) as the primary water quality indicator, the analysis in EA Table 4.2.4-1 shows that under a range of flow conditions, from the high mean monthly flow to the 7Q10, the water quality in the Tongue River will meet the Montana water quality requirements for an SAR value of less than 4.5 (EA Table 2.6-2 and Section 4.2.4).

At the Birney Day School monitoring station, just upstream of the Northern Cheyenne Reservation, even during the 7Q10 flow levels, water quality is predicted to not exceed the Northern Cheyenne water quality standard of 2.0 for SAR (EA Table 2.6-2 showing a predicted SAR value of 1.95 at the 7Q10 flow).

Based on the above results, I conclude that impacts to surface water quality will not be significant from the selected alternative.

Drawdown of Groundwater

The production of federal gas reserves under the selected alternative will not result in significant impacts from the drawdown of groundwater. As discussed in the EA under Section 4.2.4, the number of water sources (wells and springs) in the potential drawdown zone under the BLM-approved POD in Alternative B potentially would not increase when compared to Alternative A.

While some water sources could experience reduced yields, the operator is required by the State and the BLM to offer mitigation agreements to the owners of any spring or well adversely impacted. These agreements will apply to the owners of these wells and springs whether the impact to their use is due to decreased yield, the production of methane (methane migration), or a change in water quality. The replacement of water required by these agreements is anticipated to take the form of reconfiguring existing wells, re-drilling wells or drilling new wells. These actions will be effective in replacing water sources and preventing significant impacts since the drawdown will likely be confined to the coal seam aquifers, and any lost water sources will be replaced with a permanent source before termination of the agreement. Impacts are not expected after cessation of CBNG development since the aquifer will be in

the recovery phase with rising groundwater levels. The agreements are included as part of the approved POD.

Based on the above results, I conclude that impacts to groundwater will not be significant from the selected alternative.

Produced Water Management

Fidelity's – Dry Creek POD will make produced water from the federal CBNG wells available for beneficial uses or discharged into the Tongue River in accordance with Fidelity's existing MPDES permit (MT0030457). Produced water would be transported through buried plastic flowlines from each well site to the following existing facilities: (a) 2 discharge points (outfalls) along the Tongue River, (b) Spring Creek Coal Mine use for mine operations, (c) one existing off-channel impoundment, and (d) 3 stock watering tanks.

The discharge points into the Tongue River are located near the main channel in areas with low channel gradients. Each outfall structure consists of a riprap pad surrounding the discharge pipe with a narrow riprap lined trench sloping into the channel area to prevent eroding the channel bank.

Fidelity is currently discharging privately produced water to the off-channel impoundment, as necessary to satisfy landowner stock watering needs. The Dry Creek POD proposes to receive federally produced water in the impoundment. The impoundment is located in a small topographically enclosed basin underlain by low-permeability clay materials. The impoundment is entirely located on private land, private mineral lease. BLM approval is required in accordance with Federal Onshore Oil and Gas Order No. 7. Fidelity has submitted an MBOGC approved Application For Permit To Construct Or Operate An Earthen Pit Or Pond, dated April 3, 2001.

Based on the above results, I conclude that impacts related to produced water management will not be significant from the selected alternative.

Lands and Realty

A right-of-way will be issued for 12 existing buried four-inch poly gas lines in the NE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 19, T. 9 S., R. 40 E., and for three buried four-inch poly gas lines, one buried three-inch poly water line, and an access road, which are existing, in the NW $\frac{1}{4}$ SE $\frac{1}{4}$, Section 13, T. 9 S., R. 39 E. In addition, the BLM right-of-way will authorize the following facilities on Federal surface within the project area:

- One proposed buried four-inch poly gas line, one proposed buried three-inch poly water line, a .48 kV, 3-phase buried powerline, and an existing two-track access road in the NE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 26, T. 9 S., R. 39 E.

- Two proposed buried four-inch poly gas lines, one proposed buried three-inch poly water line, a .48 kV, 3-phase buried powerline, and an existing access road which will be improved to an all weather Resource road in Lot 2, Section 18, T. 9 S., R. 40 E.

- Fifteen proposed buried four-inch poly gas lines and an existing access road which will be improved to an all weather Resource road in the NE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 19, T. 9 S., R. 40 E.

The right-of-way will be granted under Section 28 of the Mineral Leasing Act of 1920, as amended (MLA) and the pipelines, powerline, and access road would be constructed, used, maintained and terminated in conformance with the company's plan of development. The right-of-way will be subject to

the Stipulations in Appendix D of the EA and to cost recovery and rental and will be issued for a term of twenty years and be renewable. The right-of-way will be monitored for construction, use, and reclamation.

Based on the above results and right-of-way stipulations, I conclude that impacts related to Lands and Realty will not be significant from the selected alternative.

Social and Economic Conditions/Environmental Justice

Approval of Dry Creek POD will not create a significant burden on area services, infrastructure or substantially change the level of employment (EA Section 4.2.9). The EA did not identify any disproportionate impacts on low income or minority communities and there are no environmental justice issues that will be created by approval of the Fidelity - Dry Creek POD.

Approval of the Fidelity POD will prevent the drainage of federal minerals by adjacent private or state wells. This will protect taxpayer resources and provide revenue to federal, state and county governments.

Based on the above results, I conclude that impacts to the Social and Economic Conditions/Environmental Justice will not be significant from the selected alternative.

Wildlife Resources

Two wildlife species listed as Threatened or Endangered, under the Endangered Species Act occur or have the potential to occur within this area. These include the bald eagle and the black-footed ferret.

Bald eagles are the only known federally listed threatened or endangered species that are known to inhabit this area. The southern boundary of the Dry Creek POD is located between 0.75 and 1.75 miles from the Tongue River, which is considered important bald eagle habitat. Bald eagles will use the Tongue River for nesting, foraging, and as a migration route. Two active bald eagle nests are located approximately 4 miles from the nearest federal Dry Creek POD CBNG well, one to the east, and one to the south. The Dry Creek POD area may be used occasionally by bald eagles as foraging habitat. It is also expected that bald eagles may migrate through the POD area infrequently (EA Section 3.12.1).

Most constructed power lines will be buried, which will reduce the potential for electrocution of eagles and other raptors. The constructed overhead power line will be installed with raptor protection devices, as included in Fidelity's POD, will reduce the potential for electrocution of eagles and other avian species. In addition, the mitigating measures required to protect bald eagles are in the Biological Opinion for this project provided by the Fish and Wildlife Service, and are required to be implemented as a condition of approval (Biological Opinion, November 08, 2004). Therefore, the impacts to T&E listed species will not be significant.

The potential for black-footed ferret habitat within the Dry Creek POD was also assessed. According to United States Fish and Wildlife Service (USFWS) guidelines for determining suitable black-footed ferret habitat (USFWS, 1989), a black-tailed prairie dog complex suitable to support ferrets is defined as an aggregation of two or more neighboring prairie dog towns separated by a distance of less than 4.34 miles and totaling 80 acres or more. The combination of black-tailed prairie dog burrow density/acre and the acreage of prairie dog towns within the Dry creek POD were determined as potential habitat for black-footed ferrets. Surveys for black-footed ferrets were conducted within the Dry Creek POD. No black-footed ferrets or their sign were observed during the surveys. (Hayden-Wing Associates, 2004) Black-footed ferret surveys have also been previously conducted within adjacent areas. Black-footed ferret surveys were conducted by Hayden-Wing associates on black-tailed prairie dog towns located 1 ½ miles

to the northwest, 2 miles to the southwest, 2 ½ miles to the southwest, 2 ½ miles to the east, and 4 ½ miles to the east of the POD boundary. No black-footed ferrets or their sign were observed during the surveys.

There are no known grouse leks within the project area boundary; however seven federal well sites are located in grouse nesting habitat within two miles of an active lek. Three sage grouse strutting grounds exist within two miles of the POD boundary, two of which have been documented as being active. The BI-11 strutting ground is located approximately 1.5 miles west of the nearest federal well. The BI-10A strutting ground is located approximately 1.9 miles north of the nearest proposed federal well. The other strutting ground (BI-12) was last reported as active in 1988. Some habitat exists to potentially support sage grouse nesting, brood-rearing, and winter range within the Dry Creek POD. A construction and drilling timing stipulation for sage grouse: No construction from March 1 to June 15 in grouse nesting habitat within two miles of an active lek for the following wells: 32 M,C-1599; 43 M,C-1599; 22 M,C,-2399; 43 M,C-2399; 24 C-2399; 41 C,D-2699; 24 C,D-2699 and 42 D-1599, unless BLM grants an exception.

A sharp-tailed grouse strutting ground (unknown activity) exists slightly northeast of the BI-10A strutting ground, just over 2 miles from the nearest federal well. Some sharp-tailed grouse habitat exists within the rougher topography and riparian areas within the Dry Creek POD.

There are no anticipated impacts to sage grouse or sharp-tailed grouse that would be considered significant, due to the proximity of the project area to leks or strutting grounds and the construction timing restriction being applied to nesting habitat.

The entire POD project area is considered to be mule deer winter range habitat. Due to this situation, in an effort to lessen the impact of development activities on mule deer, a construction timing stipulation will be applied. Construction and drilling timing stipulation for mule deer winter range: All of the federal wells proposed within the Dry creek POD would be located within identified mule deer winter range. Construction and drilling activities are prohibited from December 1 to March 31, unless BLM grants an exception.

A construction and drilling timing stipulation for raptor nests active within the past two years: Construction and drilling activities are prohibited within 0.5 miles of a nest from March 1 to August 1, on the following wells: 12D,M,C-1990, unless BLM grants an exception.

For other wildlife species, the timing restrictions and avoidance measures in Dry Creek POD and wildlife monitoring and protection plan will protect wildlife resources. These measures manage and restrict activities during critical time periods to avoid disturbance on important habitats and during breeding and nesting seasons (EA Section 4.2.12).

As a result of the above wildlife protective measures and conditions of approval, I conclude that impacts to area wildlife from approval of Dry Creek POD will not be significant.

Cumulative Effects

The addition of 24 federal wells (also, the addition of the previously approved 11 state and 3 fee) in the Dry Creek project area are considerably fewer than the 26,000 wells that were predicted in the MT EIS over the next 20 years. The activity is well within the scope of that analyzed in the 2003 MT EIS and supplemental analysis is not necessary.

The analysis in the attached EA did not identify any significant effects that will result from approval of the Fidelity Tongue River-Dry Creek POD in combination with the cumulative actions listed in EA Section 2.3.

COMPLIANCE AND MONITORING

The BLM and Fidelity Exploration & Production Company will provide qualified representatives on the ground during and following construction to validate construction, reclamation, and other approved compliance checks commensurate with the provisions of this Decision Record. The MT EIS (pages MON-7 and MON-8) describes the type of actions that will occur under BLM's inspection and enforcement program to ensure the Dry Creek POD development and operations are conducted according to the provisions of Alternative B.

Additional monitoring described in the MT EIS (Monitoring Appendix) concerning surface water quality, regional groundwater and air quality is tied to established programs operated by the U.S. Geological Survey, Montana Bureau of Mines and Geology, Montana Department of Environmental Quality and BLM.

Fidelity has committed to monitoring activity in their proposal; including:

- All water quality measures identified per the MDEQ MPDES permit
- Domestic water wells and springs included in the cone of influence to determine if impacts are occurring that require mitigation
- Existing and new disturbed areas for invasions of noxious weeds
- Success of reclamation measures
- Prairie dog town boundary changes
- Occurrence of mountain plovers on suitable habitat
- Bald eagle winter roosts
- Cooperation with Montana Fish, Wildlife and Parks and BLM biologists in their monitoring of big game crucial winter ranges
- Raptor nest success and productivity (including Bald eagle)
- Sage and sharp-tailed grouse activity within two miles of development

Appropriate remedial action will be taken by Fidelity in the event unacceptable impacts are identified during the life of the project.

APPEAL PROCESS

You have the right to request a State Director Review (SDR) of this decision and the Conditions of Approval pursuant to 43 CFR 3165.3(b). An SDR request, including all supporting documentation must be filed with the Montana State Office, State Director (MT-920) at P. O. Box 36800, Billings, Montana 59107 within 20 business days of your receipt of this decision.

If adversely affected by the State Director's decision, it can be further appealed to the Interior Board of Land Appeals (IBLA) pursuant to 43 CFR 3165.4, 43 CFR 4.411, and 43 CFR 4.413. Should you fail to timely request an SDR, or after receiving the State Director's decision, fail to timely file an appeal with the IBLA, no further administrative review of this decision will be possible.

/s/ David McIlnay
Field Manager
Miles City Field Office

12/16/04
Date

Attachments:

POD Conditions of Approval to Fidelity Exploration and Production Company - Dry Creek POD
Right-of-Way Stipulations to Fidelity Exploration and Production Company - Dry Creek POD
Environmental Assessment MT-020-2004-298, Tongue River-Dry Creek Project

CONDITIONS OF APPROVAL

General

1. The first well drilled to each targeted coal zone will be designated as the POD reference well. Designated reference wells must have the ability to be sampled at the wellhead. Water quality samples must be collected by the operator and submitted for analysis using MDEQ MPDES criteria within 60 days of initial water production. Results of the analysis must be submitted to the MCFO-BLM Authorized Officer as soon as they become available.
2. A pre-construction field meeting must be conducted prior to beginning any construction activities approved under this POD. The operator must contact the BLM Authorized Officer, (406-233-3645) at least 4 days prior to beginning operations so that the meeting can be scheduled. The operator is responsible for having all contractors present (dirt contractors, drilling contractor, pipeline contractor, project oversight personnel, etc.) including the overall field operations superintendent and for providing all contractors copies of the approved POD, project map and BLM Conditions of Approval pertinent to the work that each would be doing.
3. The operator must submit a Sundry Notice (Form 3160-5) to BLM for approval prior to construction of any new surface disturbing activities related to federal leases that are not specifically addressed in the approved APD or POD Surface Use Plan.
4. If any cultural values (sites, artifacts, human remains, etc.) are observed during operation of this lease/permit/right-of-way, they are to be left intact and the Miles City Field Manager notified. The authorized officer will conduct an evaluation of the cultural values to establish appropriate mitigation, salvage or treatment. The operator is responsible for informing all persons in the area who are associated with this project that they will be subject to prosecution for knowingly disturbing historic or archaeological sites, or for collecting artifacts. If historic or archaeological materials are uncovered during construction, the operator is to immediately stop work that might further disturb such materials and contact the authorized BLM officer. Within five working days, the AO will inform the operator as to:

Whether the materials appear eligible for the National Register of Historic Places;
The mitigation measures the operator will likely have to undertake before the site can be used (assuming in situ preservation is not necessary); and,
A time-frame for the AO to complete an expedited review under 36 CFR 800.11 to confirm, through the State Historic Preservation Officer, that the findings of the AO are correct and that mitigation is appropriate. The AO will provide technical and procedural guidelines for the conduct of mitigation. Upon verification from the AO that the required mitigation has been completed, the operator will then be allowed to resume construction measures.
5. If paleontological resources, either large or conspicuous and/or a significant scientific value are discovered during construction, the find must be reported to the Authorized Officer immediately. Construction must be suspended within 250 feet of said find. An evaluation of the paleontological discovery will be made by a BLM approved professional paleontologist within five (5) working days, weather permitting, to determine the appropriate action(s) to prevent the potential loss of any significant paleontological values. Operations within 250 feet of such a discovery must not be resumed until written authorization to proceed is issued by the Authorized Officer. The applicant must bear the cost of any required paleontological appraisals, surface collection of fossils, or salvage of any large conspicuous fossils of significant scientific interest discovered during the operation.

6. Prior to the use of pesticides on public land, the holder must obtain from the BLM authorized officer written approval of a plan showing the type and quantity of material to be used, pest(s) to be controlled, method of application, location of storage and disposal of containers and any other information deemed necessary by the authorized officer to such use. Disturbed areas must be monitored annually for the presence of noxious weeds from June through August. Monitoring must begin prior to disturbance.
7. Fidelity employees and subcontractors will be prohibited from possessing firearms on the project.
8. The operator shall notify BLM (406-232-7001) at least 48 hours before beginning construction activities associated with the sites listed below. BLM shall immediately notify the Northern Cheyenne Tribe about construction activities. The company shall have its consulting archaeologist or an archaeologist holding a valid BLM Cultural Resources Permit at the sites listed below during construction. The operator shall provide the opportunity to the Northern Cheyenne Tribe for a qualified cultural resources specialist to monitor construction in the locations listed below for the Federal portion of the Dry Creek Coal Bed Natural Gas Plan of Development (POD) Area. The results of monitoring shall be reported in writing by the Consulting Archaeologist and Tribe to BLM within 14 days after completion of monitoring activities.

The purpose of the monitoring is to identify any cultural resources that may be discovered by construction activities. The archaeologist or cultural resources specialist may temporarily halt construction within 300 feet (100 meters) of the find until it can be evaluated by a BLM Cultural Resources Specialist. The operator shall immediately notify BLM (406-232-7001) upon the discovery of cultural resources. The BLM authorized officer shall respond to the operator within the five working days as per Condition of Approval No. 5. The same conditions in Condition of Approval No. 5 would apply for buried cultural resources encountered during monitoring.

CORRIDOR PLACEMENT:

The utility corridor between Wells 42 C, M-1399 and Wells 12D, M, C-1990 in sections 12, 18 and 19 shall be located within the bladed profile on the north/east side of the road.

MONITORING REQUIREMENTS:

Monitor trenching and blading operations at:

The utility corridor between Wells 42 C, M-1399 and Wells 12D, M, C-1990 in sections 12, 18 and 19.

The utility corridor between Well 22C, M-2399 and the battery site in section 24.

The utility corridor between Wells 32M, C-1599, 43M, C-1599 and the battery site in section 14.
A 2 acre area centered around Well 24C-2399.

9. Construction and drilling timing stipulation for sage grouse: No construction from March 1 to June 15 in grouse nesting habitat within two miles of an active lek for the following wells: 32 M,C-1599; 43 M,C-1599; 22 M,C,-2399; 43 M,C-2399; 24 C-2399; 41 C,D-2699; 24 C,D-2699 and 42 D-1599, unless BLM grants an exception.
10. Construction and drilling timing stipulation for mule deer winter range: All of the federal wells proposed within the Dry creek POD would be located within identified mule deer winter range. Construction and drilling activities are prohibited from December 1 to March 31, unless BLM grants an exception.

11. Construction and drilling timing stipulation for raptor nests active within the past two years:
Construction and drilling activities are prohibited within 0.5 miles of a nest from March 1 to August 1, on the following wells: 12D,M,C-1990, unless BLM grants an exception.

Drilling

1. A diverter must be installed to control pressures. (BOP equipment is not required)
2. All wait on cement times must be sufficient for the cement to reach 500 psi compressive strength as required by Onshore Oil & Gas Order No. 2.III.B.
3. A minimum of three centralizers must be installed on the production casing and spaced to afford maximum protection of the shallow coals and aquifers.
4. Reserve pits must be adequately fenced during and after drilling operations until pit is reclaimed to effectively keep out wildlife and livestock. Adequate fencing, in lieu of more stringent requirements by the surface owner, is defined as follows:
Construction materials must consist of steel or wood posts. Three or four strand wire (smooth or barbed) fence or hog panel (16-foot length by 50-inch height) or plastic snow fence must be used with connectors such as fence staples, quick-connect clips, hog rings, hose clamps, twisted wire, etc.
Construction standards: Posts must be firmly set in ground. If wire is used, it must be taut and evenly spaced, from ground level to top wire, to effectively keep out animals. Hog panels must be tied securely into posts and one another using fence staples, clamps, etc. Plastic snow fencing must be taut and sturdy. Fence must be at least 2 feet from edge of pit, three sides fenced before beginning drilling, the fourth side fenced immediately upon completion of drilling and prior to rig release. Fence must be left up and maintained in adequate condition until pit is closed.
5. The reserve pit must be lined with an impermeable liner if permeable subsurface material is encountered. An impermeable liner is any liner having permeability less than 10^{-7} cm/sec. The liner must be installed so that it will not leak and must be chemically compatible with all substances that may be put in the pit. Liners made of any man-made synthetic material must be of sufficient strength and thickness to withstand normal installation and pit use. In gravelly or rocky soils, a suitable bedding material such as sand must be used prior to installing the liner.
6. The reserve pit must be constructed so that at least half of its total volume is below natural ground level.
7. The operator must complete federal CBNG wells (case, cement and under ream) as soon as possible, but no later than 30 days after drilling operations, unless an extension is given by the BLM AO.
8. Rat and mouse holes must be filled and compacted from the bottom to the top immediately upon release of the drilling rig from the location. The only fluids/waste materials which are authorized to go into the reserve pit are Resource Conservation and Recovery Act (RCRA) exempt exploration and production wastes. These include:
 - drilling muds & cuttings
 - rigwash
 - excess cement and certain completion & stimulation fluids defined by EPA as exempt

It does not include drilling rig waste, such as:

- spent hydraulic fluids
- used engine oil
- used oil filter
- empty cement, drilling mud, or other product sacks
- empty paint, pipe dope, chemical or other product containers
- excess chemicals or chemical rinsate

9. Any evidence of non-exempt wastes being put into the reserve pit may result in the BLM Authorized Officer requiring specific testing and closure requirements.
10. Any materials classified as nonexempt hazardous wastes must be disposed of in an EPA approved facility.

Access

1. Access roads, including drainage control, must be improved and maintained as necessary or as directed by the BLM Authorized Officer to prevent soil erosion and to provide for safe and environmentally-sound access.
2. Vehicle travel on unimproved two-track roads is prohibited during periods of inclement weather or spring thaw when the possibility exists for excessive surface resource damage such as creating ruts in excess of 4 inches or causing vehicles to travel outside two-track roadway.
3. Culverts must be placed on channel bottoms on firm, uniform beds, which have been shaped to accept them and aligned parallel to the channel to minimize erosion. Backfill material must be thoroughly compacted. All culverts must be appropriately sized in accordance with standards in BLM Manual 9113.
4. Construction and other project-related traffic are restricted to approved routes. Cross-country vehicle travel is not allowed.
5. Maximum design speed on all operator constructed and maintained roads must not exceed 25 miles per hour.
6. Water or other non-saline dust suppressants with at least 50 percent control efficiency must be applied during well site, battery site and road construction. Dust inhibitors (surfacing materials, non-saline dust suppressants and water) must be used as necessary on unpaved roads that present a fugitive dust problem. The use of chemical dust suppressants on public surface will require prior approval from the BLM Authorized Officer.
7. The operator must establish, post, and enforce speed limits to achieve at least a 65% reduction of fugitive dust emissions from an assumed base speed equal to 40 miles per hour. The operator must administer dust control measures on active access roads, well sites and battery sites.

Well Sites

1. Equipment must not be stored on the topsoil stockpiles
2. A minimum 20-foot undisturbed vegetative border must be maintained between toe-of-fill of pad and/or pit areas and the edge of adjacent drainages, unless otherwise directed by the BLM Authorized Officer.

Flowlines

1. Pipeline trenches must be compacted during backfilling and must be routinely inspected and maintained to ensure proper stabilization and reclamation.
2. Pipeline construction must not block nor change the natural course of any drainage. Pipelines must cross perpendicular to drainages. Pipelines must not be run parallel in drainage bottoms.

Produced Water

1. The effluent limitations, other conditions and self-monitoring requirements must be met as contained in the MDEQ's MPDES Permit (MT0030457). All reporting will be as described in the MPDES permit, except that reports will be submitted to the BLM rather than to the MDEQ. If adverse monitoring results are recorded, discharge may need to be stopped until a modified Water Management Plan (WMP) which addresses the problem is developed and approved.

Reclamation

1. Reclamation plans must be submitted to BLM for approval via a Notice of Intent (NOI) Sundry Notice before abandoning individual federal POD facilities. Any deviation from the Surface Reclamation Plan included in the Dry Creek POD must be included at this time. Individual facilities include well locations, pipelines, impoundment, discharge point and compressor facilities.
2. Pit reclamation:
 - a. All pit(s) must be emptied of all fluids within 90 days after completion of drilling operations. The pit must be closed properly to assure protection of soil, water and vegetation.
 - b. The pit may not be cut or trenched.
 - c. Pit mud/sludge material may be buried onsite after the material has dried.
 - d. The pit material must be covered with a minimum of 3' of soil.
3. The reclamation effort will be evaluated as successful if the previously disturbed area is stabilized, all potential water erosion is effectively controlled and the vegetative stand is established with at least a 70% cover when compared to similar adjacent undisturbed areas.
4. The fluids and mud must be dry in the reserve pit before backfilling and recontouring the pit area. The operator must remediate any subsidence areas that develop from closing a pit. The plastic pit liner (if any) must be cut off below grade and properly disposed of at a state authorized landfill before beginning to recontour the site.
5. Areas of surface disturbance must be ripped or scarified to a depth of at least 12 inches before recontouring and redistributing topsoil. The rippers must not be set more than 24 inches apart.
6. Reclamation of the sites on private surface must be in accordance with the surface owner's requirements. The disturbed areas would be disked and seeded with a weed-seed free mix approved by the appropriate surface owner. At a minimum, 12 pounds per acre of seed would be planted, with the initial reseeding in the fall of 2005.

7. Topsoil must be distributed evenly over the entire recontoured area. Prepare the seedbed by disking to a depth of 4-to-6 inches following the contour. Seed must be drilled on the contour to a depth of one-half inch, followed by cultipaction to compact the seedbed, preventing soil and seed losses.
8. Any mulch used for reclamation must to be certified weed-seed free and crimped into the soil.
9. Complete fall seeding after September 15 and prior to prolonged ground frost. To be effective, complete spring seeding after the frost has left the ground and prior to May 15.
10. Waterbars must be constructed at least one (1) foot deep, on the contour with approximately two (2) feet of drop per 100 feet of waterbar to ensure drainage and extended into established vegetation. All waterbars are to be constructed with the berm on the downhill side to prevent the soft material from silting in the trench. The initial waterbar should be constructed at the top of the backslope. Subsequent waterbars should follow the following general spacing guidelines:

Slope (percent)	Spacing Interval (feet)
< 2	200
2 – 4	100
4 – 5	75
> 5	50

11. BLM will not release the bond until all disturbed areas associated with the APD/POD have been successfully revegetated (evaluation will be made after the second complete growing season) and has met all other reclamation goals of the surface owner and surface management agency.
12. For bond release approval, a Final Abandonment Notice (with a surface owner release letter on split-estate) must be submitted prior to a final abandonment evaluation by BLM.
13. Soil fertility testing and the addition of soil amendments may be required to stabilize some disturbed lands.
14. The abandonment marker must exhibit the same information required for the well sign. The abandonment marker must be installed when the wells are plugged and consist of a steel plate welded to surface casing 4 feet below ground level.

OTHER APPLICABLE REQUIREMENTS

This is not a complete list of requirements, but is an abstract of some major requirements.

1. General Requirements

- a. The lessee or designated operator shall comply with applicable laws and regulations; with the lease terms, Onshore Oil and Gas Orders; NTL's; and with other orders and instructions of the authorized officer. Any deviation from the terms of the approved APD require prior approval from BLM (43 CFR 3162.1(a)).
- b. If at any time the facilities located on public lands authorized by the terms of the lease are no longer included in the lease due to a lease or unit boundary change, the BLM will process a change in authorization to the appropriate statute. The authorization will be subject to appropriate rental, or other financial obligation determined by the authorized officer.

2. Drilling Operations (Onshore Order No. 2)

- a. All applicable safety precautions outlined in Onshore Order No. 2 shall be observed.

3. Well Abandonment (43 CFR 3162.3-4, Onshore Order No. 1 - Sec. V)

Approval for abandonment shall be obtained prior to beginning plugging operations. Initial approval for plugging operations may be verbal, but shall be followed-up in writing within 30 days. Subsequent and final abandonment notifications are required and shall be submitted on Sundry Notice (Form 3160-5), in triplicate.

4. Reports and Notifications (43 CFR 3162.4-1, 3162.4-3)

- a. Within 30 days of completion of the well as a dry hole or producer, a copy of all logs, core descriptions, core analyses, well-test data, geologic summaries, sample descriptions or data obtained and compiled during the drilling, workover, and/or completion operations shall be filed with a Completion Report (Form 3160-4), in duplicate.
- b. In accordance with 43 CFR 3162.4-3, this well shall be reported on the Oil and Gas Operations Report (OGOR, MMS-4054), starting with the month in which drilling operations commence, and continuing each month until the well is physically plugged and abandoned.
- c. Notify this office within 5 business days of production start-up if either of the following two conditions occur:
 - (1) The well is placed on production.
 - (2) The well resumes production after being off of production for more than 90 days."Placed on production" means shipment or sales of hydrocarbons from temporary tanks, production into permanent facilities or measurement through permanent facilities.

Notification may be written or verbal with written follow-up within 15 days, and must include the following information:

1. Operator name, address, and telephone number.
2. Well name and number, county and state.

3. Well location, "1/4", Section, Township, Range, P.M."
 4. Date well begins or resumes production.
 5. The nature of the well's production; that is crude oil, or crude oil casing gas, or natural gas and entrained liquid hydrocarbons.
 6. The Federal or Indian lease number.
 7. As appropriate, the Unit Agreement name, number and Participating Area name.
 8. As appropriate, the Communitization Agreement number.
5. Verbal Notifications
- Made to the BLM, MCDO 406-232-7001, or after business hours to the appropriate individual's home phone shown on the list attached.
- A. Notify this office verbally at least 48 hours prior to beginning construction.
 - B. Notify this office verbally at least 12 hours prior to spudding the well. (To be followed up in writing within 5 days.)
 - C. Notify this office verbally at least 12 hours prior to running any casing or conducting any BOP tests. (To be followed up in writing within 5 days.)
 - D. Notify this office verbally at least 6 hours prior to commencing any DST test.
 - E. Notify this office verbally at least 24 hours prior to plugging the well to receive verbal plugging orders. (Refer to Informational Notice Item No. 3 for additional abandonment instructions.)
 - F. Notify this office verbally at least 24 hours prior to removal of fluids from the reserve pit.
6. Environmental Obligations and Disposition of Production (43 CFR 3162.5-1, 3162.7-1 and 40 CFR 302-4)
- a. With BLM approval, water produced from newly completed wells may be temporarily stored in reserve pits up to 90 days. During this initial period, application for the permanent disposal method shall be made to this office in accordance with Onshore Order No. 7. If underground injection is proposed, an EPA or State permit shall also be obtained. If surface discharge of produced water is proposed, an MPDES permit shall also be required.
 - b. Spills, accidents, fires, injuries, blowout and other undesirable events shall be reported to this office within the timeframes in NTL-3A.
 - c. You are required to take all necessary steps to prevent any death of a migratory bird in pits or open vessels associated with the drilling, testing, completion, or production of this well. The death of any migratory bird found in such a pit or open vessel is a violation of the Migratory Bird Treaty Act and is considered a criminal act. Any deaths of migratory birds attributable to pits or open vessels associated with drilling, testing, completing or production operations must be reported to this office and the United States Fish and Wildlife Service within 24 hours.

We may require that the pit be designed or the open vessel be covered to deter the entry of birds in any facility associated with drilling, testing, completion or production of this well. Fencing, screening and netting of pits may be required as a means to deter bird entry. These conditions would most likely be imposed to prevent the entry of migratory birds if oil is left in pits or open vessels after the cessation of drilling or completion of operations, if water disposal pits consistently

receive oil, or if pits or open vessels are used repeatedly for emergency situations which result in the accumulation of oil.

Voluntary pit fencing, screening and netting, or sealing vessels, is encouraged to avoid potential instances that may result in the death of a migratory bird.

7. Well Identification (43 CFR 3162.6)

Each drilling, producing or abandoned well shall be identified with the operator's name, the lease serial number, the well number, and the surveyed description of the well (either footages or the quarter-quarter section, the section, township and range). The Indian lessor's name may also be required. All markings shall be legible, and in a conspicuous place.

8. A complete copy of the approved Application for Permit to Drill (APD), including conditions, stipulations, and the H2S contingency plan (if required) shall be available for reference at the well site during the construction and drilling phases.
9. This drilling permit is valid for either one year from the approval date or until lease expiration, whichever occurs first.

10. Public Availability of Information (43 CFR 3100.4)

All submitted information not marked "CONFIDENTIAL INFORMATION" will be available for public inspection upon request.

If you have any questions, please contact a member of our staff at 406-232-7001, or at home after business hours.

RIGHT-OF-WAY STIPULATIONS

The right-of-way grant to Fidelity Exploration & Production Company for the buried gas and water pipelines, buried powerlines, and access roads would be issued under the authority of Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185) and subject to the terms and conditions in 43 CFR 2880, in the application and plan of development, and subject to the stipulations listed below.

1. The holder shall construct, operate, and maintain the facilities, improvements, and structures within this right-of-way in strict conformity with Fidelity's Dry Creek Plan of Development which was approved and made a part of the grant. Any relocation, additional construction, or use that is not in accord with the approved plan of development, shall not be initiated without the prior written approval of the authorized officer. A copy of the complete right-of-way grant, including all stipulations and approved plan(s) of development, shall be made available on the right-of-way area during construction, operation, and termination to the authorized officer. Noncompliance with the above will be grounds for an immediate temporary suspension of activities if it constitutes a threat to public health and safety or the environment.
2. Any cultural and/or paleontological resource (historic or prehistoric site or object) discovered by the holder, or any person working on his behalf, on public or Federal land shall be immediately reported to the authorized officer. Holder shall suspend all operations in the immediate area of such discovery until written authorization to proceed is issued by the authorized officer. An evaluation of the discovery will be made by the authorized officer to determine appropriate actions to prevent the loss of significant cultural or scientific values. The holder will be responsible for the cost of evaluation and any decision as to proper mitigation measures will be made by the authorized officer after consulting with the holder.
3. The holder shall comply with all applicable Federal laws and regulations existing or hereafter enacted or promulgated. In any event, the holder(s) shall comply with the Toxic Substances Control Act of 1976, as amended (15 U.S.C. 2601, et seq.) with regard to any toxic substances that are used, generated by or stored on the right-of-way or on facilities authorized under this right-of-way grant. (See 40 CFR, Part 702-799 and especially, provisions on polychlorinated biphenyls, 40 CFR 761.1-761.193.) Additionally, any release of toxic substances (leaks, spills, etc.) in excess of the reportable quantity established by 40 CFR, Part 117 shall be reported as required by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, Section 102b. A copy of any report required or requested by any Federal agency or State government as a result of a reportable release or spill of any toxic substances shall be furnished to the authorized officer concurrent with the filing of the reports to the involved Federal agency or State government.
4. The holder shall conduct all activities associated with the construction, operation, and termination of the right-of-way within the authorized limits of the right-of-way.
5. Holder shall remove only the minimum amount of vegetation necessary for the construction of structures and facilities. Topsoil shall be conserved during excavation and reused as cover on disturbed areas to facilitate regrowth of vegetation.
6. The holder shall seed all disturbed areas with native seed, using an agreed upon method suitable for the location. Seeding shall be repeated if a satisfactory stand is not obtained as determined by the authorized officer upon evaluation after one growing season. The holder must seed all disturbed areas with the seed mixture(s) listed below. The seed mixture(s) must be planted in the amounts specified in pounds of pure live seed (PLS)/acre. There must be no primary or secondary

noxious weed seed in the seed mixture. Seed must be tested and the viability testing of seed must be done in accordance with State law(s) and within six months prior to purchase. Commercial seed must be either certified or registered seed. The seed mixture container must be tagged in accordance with State law(s) and available for inspection by the authorized officer.

Seed must be planted using a drill equipped with a depth regulator to ensure proper depth of planting where drilling is possible. The seed mixture must be evenly and uniformly planted over the disturbed area. Smaller/heavier seeds have a tendency to drop to the bottom of the drill and are planted first. The holder must take appropriate measures to ensure this does not occur. Where drilling is not possible, seed may be broadcast and the area raked or chained to cover the seed. When broadcasting the seed, the pounds per acre noted below are to be doubled. The seeding must be repeated until a satisfactory stand is established as determined by the Authorized Officer. Evaluation of growth will not be made before completion of the second growing season after seeding. The Authorized Officer is to be notified a minimum of seven days prior to seeding of the project.

ROW Seed Mixture (Silty or Clayey Ecological Sites)

The combination must include at least four of the following species. Western wheatgrass must be included in the mix. Thickspike wheatgrass may be substituted for wheatgrass only when western wheatgrass is unavailable.

<i>Species of Seed</i>	<i>(Variety)</i>	<i>Common Name</i>	<i>Pounds/acre *(PLS)</i>
<u>Pascopyrum smithii</u>	(Rosanna)	Western wheatgrass	3.00
<u>Pseudoroegneria spicata</u>	(Goldar)	Bluebunch wheatgrass	2.00
<u>Stipa viridula</u>	(Lodom)	Green needlegrass	2.00
<u>Elymus trachycaulus</u>	(Pryor)	Slender wheatgrass	2.00
<u>Stipa comata</u>		Needleandthread	1.00
<u>Bouteloua curtipendula</u>		Sideoats Grama	2.00
<u>Schizachyrium scoparium</u>		Little bluestem	2.00

*Pure Live Seed (PLS) formula: % of purity of seed mixture times %
germination of seed mixture = portion of seed mixture that is PLS

7. The proposed improved portion of the road, Lot 2, Section 18 and the NENW, Section 19, T. 9 S., R. 40 E., as part of this authorization shall be constructed and maintained in accordance with the BLM standards prescribed for a Resource Road as described in the *Surface Operating Standards for Oil and Gas Exploration and Development* (BLM 1989; also known as the "Gold Book").
8. The holder shall be responsible for weed control on disturbed areas within the limits of the right-of-way. The holder is responsible for consultation with the authorized officer and/or local authorities for acceptable weed control methods (within the limits imposed in the grant stipulations).
9. No construction or routine maintenance activities shall be performed during periods when the soil is too wet to adequately support construction equipment. If such equipment creates ruts in excess of 3-4 inches deep, the soil shall be deemed too wet to adequately support construction equipment.
10. *The holder shall coordinate with the parties holding authorized rights on the adjacent and affected land [such as the grazing permittee/lessee].

11. Sixty days prior to termination of the right-of-way, the holder shall contact the authorized officer to arrange a joint inspection of the right-of-way. This inspection will be held to agree to an acceptable termination (and rehabilitation) plan. This plan shall include, but is not limited to, removal of facilities, drainage structures, or surface material, recontouring, topsoiling, or seeding. The authorized officer must approve the plan in writing prior to the holder's commencement of any termination activities.

* This non-standard stipulation was approved by the District Manager, which is the next higher level of Bureau line management, for right-of-way MTM-83461, on September 28, 1994.